THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10264 OF 2006

14.09.2006

Between:

M/s.Eltel Industries, Bangalore represented by its
Senior Product Engineer – Mr.N.Prakash

… Petitioner

AND

Chairman and Managing Director, AP TRANSCO, Hyderabad
And others

… Respondents

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ORDER:

The petitioner concern statedly is a manufacturer of test instruments for electrical power industries and utilities having wide experience in supply of Tan Delta test sets to Karnataka Power Transmission Corporation Limited, Bangalore, Voltech Engineers, Chennai, Neyveli, NTPC etc. Pursuant to tender No.CTO-03/2005 issued in November 2005 for purchase of 13 units of 5-KV Automatic Capacitance and Tan Delta measuring instruments, the petitioner submitted tender allegedly quoting the least price of Rs.7,53,088/- (Rupees Seven lakhs fifty three thousand and eighty eight only). The petitioner, thereafter, was called for demonstration at two substations of the A.P. Transmission Corporation in Hyderabad. The petitioner then was called for negotiations and in spite of the same, ignoring the least quotation of the petitioner and revised offer made on 03.4.2006, the work was allotted to the second respondent, aggrieved by which, the present writ petition is filed. It is mainly contended that the first respondent adopted arbitrary method in awarding the contract to the second respondent defeating the expectation of the petitioner.

It is now well settled that the question of arbitrariness in awarding of contract can be raised only at the pre-award stage of contract. At the moment the contract is awarded, such argument is not available to an aggrieved person. He has to seek appropriate remedy in Civil Court.

In **Radha Krishna Agarwal v State of Bihar**[1] the Supreme Court held that power to enter into contract is not always regulated by the Constitution. The relationship of persons to the contract is regulated by the contract. The State as well as other persons to the contract is bound by the obligations in the contract. Though the relationship between the persons to the contract is not the relationship of master and servant, after entering into contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract. The remedy under Article 226 of the Constitution of India is not a proper remedy for redressing the grievance of the parties to the contract. The following observations of the Apex Court in

Radhakrishna Agarwal (supra), further lay down as under.

> … … Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed abduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

In view of the settled position, a writ petition is not maintainable and it is accordingly dismissed. No costs.

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September 14, 2006

(**V.V.S.RAO, J**)

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[1] AIR 1977 SC 1496